

SERVICE DATE – NOVEMBER 23, 2016

SURFACE TRANSPORTATION BOARD

Docket No. AB 6 (Sub-No. 492X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN THURSTON COUNTY, WASH.

Decided: November 22, 2016

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 1.43 miles of rail line between milepost 14.57 and milepost 16.0 in Belmore, Thurston County, Wash. (the Line).¹ Notice of the exemption was served and published in the Federal Register on May 11, 2016 (81 Fed. Reg. 29,316). The exemption became effective on June 10, 2016.²

By decision served on June 9, 2016, the Board imposed two environmental conditions recommended by the Board's Office of Environmental Analysis (OEA) in an Environmental Assessment (EA) served on May 16, 2016, and in its final EA dated June 3, 2016. The conditions require BNSF to: (1)(a) pursuant to Section 7 of the Endangered Species Act (16 U.S.C. § 1535), consult with OEA and the U.S. Fish and Wildlife Service (USFWS) to determine if the proposed abandonment could adversely impact any federally listed species, candidate species, or designated critical habitats within the project area and, if any such species are located, USFWS may recommend avoidance and impact mitigation measures to develop appropriate mitigation measures, if necessary, and (b) be prohibited from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 7 consultation process has been completed and the Board has removed this condition; and (2)(a) in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, BNSF shall immediately cease all work and notify OEA and the Washington State Department of

¹ The Line is a portion of a 10.2-mile line of railroad currently being leased to the City of Tacoma, Department of Public Utilities, Beltline Division, d/b/a Tacoma Rail or Tacoma Municipal Beltline or TMBL (the City). See City of Tacoma, Dep't of Pub. Utils., Beltline Div.—Acquis. & Operation Exemption—Lakeview Subdivision, Quadlok-St. Clair & Belmore-Olympia Rail Lines in Pierce & Thurston Ctys., Wash., FD 34555 (STB served Oct. 19, 2004). The City has filed a petition for exemption under 49 U.S.C. 10502 to discontinuance common carrier service over the leased 10.2-mile Line. The petition is pending before the Board. See City of Tacoma, Dep't. of Pub. Utils., Beltline Div.—Discontinuance of Service Exemption—in Thurston County, Wash., AB 1239 (Sub-No. 2X) (STB served Sept. 2, 2016).

² Although the exemption became effective on June 10, 2016, the abandonment cannot be consummated by BNSF until the City's petition has been approved by the Board and the City has consummated the discontinuance.

Archaeology and Historic Preservation (State Historic Preservation Office or SHPO), pursuant to 36 C.F.R. § 800.13(b) and (b) OEA will then consult with the SHPO, BNSF, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

In a Supplemental Final EA dated November 10, 2016, OEA states that it received correspondence from the USFWS in response to Condition 1 imposed in the June 9, 2016 decision. OEA notes that based on the correspondence, it has determined that the Section 7 consultation process has been completed and recommends that the Board remove Condition 1. OEA also recommends that the following new environmental condition be imposed: In order to protect the Oregon spotted frog and other federally listed species and critical habitat, the following best management practices shall be implemented prior to salvaging the rail line: (a) limit salvage activities from mid-January to the end of March during the breeding season, (b) install silt fence along the limit of disturbance of downstream-facing slopes within the abandonment right-of-way, (c) stabilize disturbed areas immediately following salvage, (d) prevent debris from being placed in standing water, and (e) ensure that creosote treated railroad ties are properly disposed of in a licensed waste disposal facility.

Consistent with OEA's recommendations, the previously imposed USFWS condition (Condition 1) will be removed and the newly recommended additional condition requiring BNSF to follow the best management practices prior to salvaging the line will be imposed. The previously imposed environmental condition regarding discovery of any unanticipated archaeological sites, human remains, funerary items or associated artifacts during salvage activities (Condition 2) remains unchanged.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The USFWS Section 7 consultation condition imposed in the June 9, 2016 decision is removed.
3. In addition to Condition 2 imposed in the June 9, 2016 decision (regarding any unanticipated archaeological sites, human remains, funerary items or associated artifacts that are discovered during salvage activities), BNSF's abandonment exemption is subject to a new environmental condition as follows: In order to protect the Oregon spotted frog and other federally listed species and critical habitat, the following best management practices shall be implemented prior to salvaging the rail line: (a) limit salvage activities from mid-January to the end of March during the breeding season, (b) install silt fence along the limit of disturbance of downstream-facing slopes within the abandonment right-of-way, (c) stabilize disturbed areas immediately following salvage, (d) prevent debris from being placed in standing water, and

(e) ensure that creosote treated railroad ties are properly disposed of in a licensed waste disposal facility.

4. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.